

The Honorable Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

PATRICK COLACURCIO, MARIS and
DAVID HANSON, and JAMES McMURCHIE,
individually and on behalf of all others similarly
situated;

Plaintiffs,

v.

INSIGHT VENTURE PARTNERS VII, L.P., a
Cayman Islands limited partnership; INSIGHT
VENTURE PARTNERS (CAYMAN) VII, L.P.,
a Cayman Islands limited partnership; INSIGHT
VENTURE PARTNERS VII (CO-
INVESTORS), L.P., a Cayman Islands limited
partnership; INSIGHT VENTURE PARTNERS
(DELAWARE) VII, L.P., a Delaware limited
partnership; INSIGHT VENTURE PARTNERS
COINVESTMENT FUND II, L.P., a Delaware
limited partnership; INSIGHT VENTURE
ASSOCIATES VII, L.P., a Delaware limited
partnership; INSIGHT VENTURE
ASSOCIATES VII, LTD., a Cayman Islands
limited company; INSIGHT VENTURE
ASSOCIATES COINVESTMENT II, L.P., a
Delaware limited partnership; INSIGHT
VENTURE MANAGEMENT, LLC, a Delaware
limited liability company; INSIGHT HOLDING
GROUP, LLC, a Delaware limited liability
company, and RYAN HINKLE,

Defendants.

NO. 2:20-cv-01856-RSM

ORDER GRANTING PLAINTIFFS'
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

Noting Date: December 2, 2021

ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT

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This matter is before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion") for consideration of whether the Court should grant preliminary approval of the proposed Stipulation and Agreement of Settlement ("Settlement") reached by the Parties, preliminarily certify the proposed Settlement Class, and approve the proposed plan for notifying the Potential Settlement Class.¹ Having reviewed the proposed Settlement, together with its exhibits, and based upon the relevant papers and all prior proceedings in this matter, the Court determines that the proposed Settlement satisfies the criteria for preliminary approval, the proposed Settlement Class is preliminarily certified, and the proposed Notice Program is approved. Accordingly, good cause appearing in the record, Plaintiff's Motion is **GRANTED**, and **IT IS HEREBY ORDERED THAT:**

Provisional Certification of the Settlement Class

1. The Court provisionally certifies the following Settlement Class:

All individuals and entities who sold stock in Smartsheet, Inc. in connection with the tender offer for stock of Smartsheet, Inc. dated June 2, 2017. Excluded from the Settlement Class are (1) the Defendants and all of their respective employees, officers, directors, agents, immediate family members, legal representatives, parent corporations, subsidiaries, controlled affiliates, insurers, guarantors, heirs, successors, and assigns, (2) all other Smartsheet shareholders who offered to purchase shares in the June 2017 tender offer, (3) Mark Mader, Brent Frei, Kara Hamilton, and Andrew Lientz, (4) the Judge presiding over this Action and all members of his family, and (5) persons who timely and validly request exclusion from the Settlement Class.

This Settlement Class is provisionally certified for purposes of settlement only.

2. The Court determines that for settlement purposes, the proposed Settlement Class meets all the requirements of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure,

¹ Unless otherwise indicated, all capitalized terms used herein have the same meaning as those used in the Settlement (Exhibit 1 to the Dennett Declaration).

1 namely that the class is so numerous that joinder of all members is impractical; there are common
 2 issues of law and fact; the claims of the Plaintiffs are typical of absent class members; Plaintiffs
 3 will fairly and adequately protect the interests of the class, and have no interests antagonistic to
 4 or in conflict with the class, and have retained Class Counsel who are experienced and competent
 5 counsel to prosecute this matter; common issues predominate over any individual issues; and a
 6 class action is the superior means of adjudicating the controversy.

7 3. Named Plaintiffs James McMurchie, David Hanson and Maris Hanson are
 8 designated and appointed as the Settlement Class Representatives pursuant to Rule 23(a) of the
 9 Federal Rules of Civil Procedure. The Court preliminarily finds that Named Plaintiffs will fairly
 10 and adequately represent the interests of the Class in enforcing their rights in the Action; that
 11 Named Plaintiffs are similarly situated to absent Settlement Class Members; that Named
 12 Plaintiffs have Article III standing to pursue their claims; and that Named Plaintiffs are therefore
 13 typical of the Class and will be adequate class representatives.

14 4. Plaintiffs' Counsel from the firms Tousley Brain Stephens PLLC and McNaul
 15 Ebel Nawrot & Helgren PLLC are designated as Class Counsel pursuant to Fed. R. Civ. P. 23(g).
 16 The Court further appoints Jason T. Dennett of Tousley Brain Stephens PLLC as Lead Class
 17 Counsel. The Court finds that these lawyers are experienced and will adequately protect the
 18 interests of the Settlement Class.

19 **Preliminary Approval of the Proposed Settlement**

20 5. The Court finds the proposed Settlement is fair, reasonable, and adequate, in
 21 accordance with Rule 23(e) of the Federal Rules of Civil Procedure, pending a final hearing on
 22 the Settlement as provided herein. The Settlement meets the criteria for approval, and warrants
 23

issuance of notice to the Settlement Class. Accordingly, the Court preliminarily approves the terms of the Settlement Agreement.

Notice and Administration

6. Administrator. The Court appoints Angeion Group as Settlement Administrator to administer the notice procedure and the processing of claims, under the supervision of Class Counsel.

7. Class Notice. The form and content of the proposed Email Notice and Long Form Notice submitted by the Parties as Exhibits 1–2, respectively, to the Settlement Agreement, are hereby approved. Prior to the dissemination of Class Notice, the Settlement Administrator shall establish a dedicated Settlement Website and shall maintain and update the website through the administration of the Settlement (“Settlement Website”).

8. Notice Date. The Court directs that the Settlement Administrator cause a copy of the Email Notice to be emailed to all Potential Settlement Class Members, and a copy of the Long Form Notice to be mailed to all Potential Settlement Class Members, in the manner outlined in the Settlement Agreement. The mailing is to be made by first class United States mail and via email for Potential Settlement Class Members where an existing email address is available, within twenty-eight (28) calendar days following the entry of the Preliminary Approval Order. The Settlement Website shall include, and make available for download, copies of the Settlement Agreement and Long Form Notice.

9. Findings Concerning Notice. The Court finds and determines that the Email Notice and Long Form Notice constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the requirements of due process, Rule 23 of the Federal

1 Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Court
2 further finds that the Notices are written in plain language, use simple terminology, and are
3 designed to be readily understandable by Settlement Class Members.

4 10. Funds Held by Settlement Administrator. All funds held by the Settlement
5 Administrator shall be deemed and considered to be *in custodia legis* of the Court and shall
6 remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant
7 to the Settlement or further order of the Court.

8 Exclusions

9 11. Any Potential Settlement Class Member that wishes to be excluded from the
10 Settlement Class must mail an Exclusion Letter to the Settlement Administrator at the addresses
11 provided in the Notice, postmarked no later than the Deadline to Opt-Out, as specified on the
12 Notice, and sent via first class postage pre-paid U.S. mail. The Exclusion Letter must include the
13 name of this Litigation (*Colacurcio v. Insight*); the full name, address, and telephone number of
14 the Potential Settlement Class Member; and a statement that the Potential Settlement Class
15 Member wishes to be excluded from the Settlement. The Exclusion Letter shall be signed and
16 dated by the Potential Settlement Class Member or by an individual or entity with the authority
17 to bind the Potential Settlement Class Member.

18 Objections

19 12. A Potential Settlement Class Member that complies with the requirements of this
20 Order may object to the Settlement, the Plan of Allocation, the request of Class Counsel for an
21 award of attorneys' fees, costs, and expenses, and/or the request for a Service Award.

22 13. No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or
23 other documents submitted by any Settlement Class Member shall be received and considered

by the Court, unless the objection is: (a) electronically filed with the Court by the Deadline to Object; or (b) mailed first-class postage prepaid to the Settlement Administrator, Clerk of Court, Class Counsel, and Defendants' Counsel at the addresses listed in the Notice and postmarked by no later than the Deadline to Object, as specified in the Notice. For the objection to be considered by the Court, the objection shall set forth:

- a. A heading referring to the *Colacurcio v. Insight* Action;
- b. The objector's name, address, telephone number, the last four digits of his or her Social Security Number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;
- c. A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with the objection; and
- d. A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number; and
- e. The objector's signature.

14. Any Settlement Class Member that fails to comply with the provisions in this Order will waive and forfeit any and all rights it may have to object, and shall be bound by all the terms of the Settlement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the releases in the Settlement, if finally approved. Any Potential Settlement Class Member who both objects to the Settlement and submits an Exclusion Letter will be deemed to have opted-out and the objection shall be deemed null and void.

Final Approval Hearing

15. Final Approval Hearing. A hearing will be held by this Court in the Courtroom of The Honorable Ricardo S. Martinez, United States District Court for the Western District of Washington, United States Courthouse, 700 Stewart Street, Suite 13134, Seattle, WA 98101-9906 at 9:00 a.m. on May 11, 2022 (“Final Approval Hearing”), to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Class; (b) whether the Final Approval Order should be entered in substance materially the same as Exhibit 4 to the Settlement Agreement; (c) whether the Settlement Agreement should be approved as fair, reasonable, and adequate to the Settlement Class; (d) whether to approve the application for service awards for the Named Plaintiffs (“Service Awards”) and an award of attorneys’ fees and litigation expenses (“Fee Award and Costs”); and (e) any other matters that may properly be brought before the Court in connection with the Settlement. The Final Approval Hearing is subject to continuation or adjournment by the Court without further notice to the Class. The Court may approve the Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Class.

16. Class Counsel shall submit their application for fees, costs, and expenses and the application for a Service Award no later than **98 days** after entry of this Order. The deadline to file an objection and any response to Class Counsel’s motions is no later than **112 days** after entry of this Order. The deadline to file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or Class Counsel’s application for attorneys’ fees, costs, and expenses and for a Service Award shall be **126 days** after entry of this Order.

17. Any Settlement Class Member that has not timely and properly excluded himself, herself, or itself from the Settlement Class in the manner described above may appear at the Final

Approval Hearing in person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed Settlement; provided, however, that no Potential Settlement Class Member that has elected to exclude himself, herself, or itself from the Settlement Class shall be entitled to object or otherwise appear, and further provided that no Settlement Class Member shall be heard in opposition to the Settlement unless the Settlement Class Member complies with the requirements of this Order pertaining to objections, which are described above.

18. CAFA Notice. Prior to the Final Approval Hearing, Class Counsel and Defendants shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with the provision of notice as set forth in Section 2(b) of the Settlement.

19. Stay of the Action. Pending the Final Approval Hearing, all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are hereby stayed.

Summary of Deadlines

Notice Date	28 days after Preliminary Approval
Deadline to Opt-Out	77 days after Preliminary Approval
Deadline for Motion for Final Approval of the Settlement and Motion for attorneys' fees, costs, and for a Service Award	98 days after Preliminary Approval
Deadline to Object	112 days after Preliminary Approval
Reply in Support of Motion for attorneys' fees, costs, and for a Service Award and Final Approval Motion	126 days after Preliminary Approval
Final Approval Hearing	May 11, 2022 at 9:00 AM

Termination of the Settlement and Use of this Order

20. If the Settlement is not finally approved by the Court or is terminated in accordance with the terms of the Settlement, this Order shall become null and void and shall be

1 without prejudice to the rights of the Parties, all of which shall be restored to their respective
2 positions existing immediately before this Court entered this Order. In such event, the Settlement
3 shall become null and void and be of no further force and effect, and neither the Settlement
4 (including any Settlement-related filings) nor the Court's orders, including this Order, relating to
5 the Settlement shall be used or referred to for any purpose whatsoever.

6 21. If the Settlement is not finally approved or there is no Effective Date under the
7 terms of the Settlement, then this Order shall be of no force or effect; shall not be construed or
8 used as an admission, concession, or declaration by or against Defendants of any fault,
9 wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or
10 declaration by or against any Settlement Class Representative or any other Settlement Class
11 Member that its claims lack merit or that the relief requested is inappropriate, improper, and
12 unavailable; and shall not constitute a waiver by any party of any defense (including, without
13 limitation, any defense to class certification) or claims it may have in this Litigation or in any
14 other lawsuit.

15 IT IS SO ORDERED this 17th day of December, 2021.

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18 RICARDO S. MARTINEZ
19 CHIEF UNITED STATES DISTRICT JUDGE
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1 Presented by:

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4 By: s/Jason T. Dennett

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